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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,951

06/08/2004

Fred Richard Herndon

3950

7590

09/20/2006

Fred Richard Herndon  
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EXAMINER

HAWK, NOAH CHANDLER

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/709,951

Applicant(s)

HERNDON ET AL.

Examiner

Noah C. Hawk

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/8/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: the claim should set forth the structural elements and limitations that the applicant considers his invention and should not include statements directed to the problem the claimed invention will solve. For example, the following phrases should be omitted: "the embodiment of the said canopy solves the age-old problem of heat reduction internal to a vehicle, particularly a large RV or SUV without causing a wind shear problem from gale force winds," "the elimination of a major wind shear problem associated with structures large enough to cover a recreational vehicle of great length," and "designed to elimination of the lightning rod effect by not using frames and stays that could attract lightning that is a major cause of damage to a recreational vehicle." Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The phrase "extrusions pre-mounted at upper sides of a recreational vehicle" renders the claim indefinite. The claim presents an "RV Portable Sunscreen Canopy" but goes on to recite elements of the RV itself. It is unclear whether the applicant is claiming the canopy (and components thereof) alone or the combination of the canopy and RV.

b. The phrases "which is slightly larger than the roof of the target vehicle" and "at the upper sides of a recreational vehicle" render the claim indefinite. Because RVs come in different shapes and sizes, these recitations do not amount to a finite structural definition of the size of the cloth or the location of the mounting elements.

c. The phrase "or the like" in section (b) renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

- d. The phrase "such as" in section (b) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
  - e. Section (c) of the claim renders the claim indefinite because it is unclear whether the limitations included in that section are part of the claimed invention. See MPEP § 2173.05(d). For the purposes of examination, section (c) will not be given any patentable weight.
5. Claim 1 recites the limitation "the taped and sewn or glued ends and sides of the rectangular flaccid cloth" in section (f) of the claim. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: there is insufficient structural description of the "extrusions" attached to the vehicle for someone of ordinary skill in the art to understand how the tent poles are related to the extrusions during use. Further, it is unclear whether the term "extrusion" is used simply to name the mounting element or if it is intended to impart a structural definition to the element. For the purposes of examination, the "mounting extrusions" shall be treated as mounting elements and the term "extrusion" will not be treated as limiting the elements to being made of an extruded piece of material.

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7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: elements meant to perform functions listed in sections (d), (e) and (g) of the claim. If these sections merely recite functional language, they should be removed. For the purposes of examination, these sections will not be given any patentable weight. It is recommended that the applicant look to the references cited (to follow) for examples of proper claim construction and language.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Becker in US Patent 4684165. Becker teaches a flaccid porous cover (20, see, Becker, Column 2, line 67 through Column 3, line 1) having a grommet (44) and attached to the ends of tent poles (16, 18) that are mounted in mounting elements (42) by a bungee cord (22/24- the fact that the bungee cord stretches the cover over the end of the "tent pole" is considered sufficiently attached over the end).

**Conclusion**


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Riggi, Jr., Sanders, Lahutsky, Spinella et al., McAndrew, Bourgoïn, and Wade et al. teach vehicle covers. Ogle, Sr. teaches a canopy for a boat. Quinan et al. teaches a temporary canopy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NCH  
NCH  
9/16/06

  
**Peter M. Cuomo**  
Supervisory Patent Examiner  
Technology Center 3600

6/8/04  
IDS - 06/08/2004 **ELECTRONIC INFORMATION DISCLOSURE STATEMENT**

Electronic Version v18

Stylesheet Version v18.0

<b>Title of Invention</b>	<b>Recreational Vehicle (RV) Portable Sunscreen Canopy</b>						
<p>Application Number :</p> <p>Confirmation Number:</p> <p>First Named Applicant: Fred Herndon</p> <p>Attorney Docket Number:</p> <p>Art Unit:</p> <p>Examiner:</p> <p>Search string: ( 0553735 or 1520486 or 2598940 or 3349784 or 4184501 or 4432582 or 4605030 or 4655236 or 4684165 or 4805654 or 4817654 or 4944321 or 5167246 or 5197503 or 5241977 or 5595204 or 5622197 or 6059010 or 6089245 or 6357461 or 6257261 or 6725871 ).pn</p>							
<b>US Patent Documents</b>							
<b>Note: Applicant is not required to submit a paper copy of cited US Patent Documents</b>							
init	Cite.No.	Patent No.	Date	Patentee	Kind	Class	Subclass
NCH	1	0553735	1896-01-28	Murgatroyd		135	20.1
	2	1520486	1896-01-28	Sodemann		135	157
	3	2598940	1896-01-28	Robie		135	133
	4	3349784	1896-01-28	Roberts		135	161
	5	4184501	1980-01-22	Johnson		135	88.08
	6	4432582	1984-02-21	Guma		296	136.03
	7	4605030	1986-08-12	Johnson		135	88.06
	8	4655236	1987-04-07	Dorame		135	88.06
	9	4684165	1987-08-04	Becker		135	88
	10	4805654	1989-02-21	Huo-Hsin Wang		135	88.07
	11	4817654	1989-04-04	Christensen		135	90
	12	4944321	1990-07-31	Moyet-Ortiz		135	95
	13	5167246	1992-12-01	Mortenson		135	153
	14	5197503	1993-03-30	Y. I. Chen		135	88.07
	15	5241977	1993-09-07	Flores, et. al.		135	88.06
	16	5595204	1997-01-21	Chyi-Ming Hwang		135	142
	17	5622197	1997-04-22	Valarie		135	90
	18	6059010	2000-05-09	Ming-Sun Yang		160	370.22
	19	6089245	2000-07-18	Tseytlin		135	88.01
NCH	20	6357461	2002-03-19	Lun Chai, et. al.		135	88.09



6/8/04

NCH	21	6257261	2001-07-10	Johnson		135	96
NCH	22	6725871	2004-04-27	Shearer, et. al.		135	88.01

**Signature**

Examiner Name	Date
/Noah Chandler Hawk/	09/15/2006

<b>Notice of References Cited</b>	Application/Control No. 10/709,951		Applicant(s)/Patent Under Reexamination HERNDON ET AL.	
	Examiner Noah C. Hawk		Art Unit 3636	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-1,528,629 A	03-1925	QUINAN JOHNSTONE H; et. al.	135/95
*	B	US-2,847,019 A	08-1958	OGLE SR HATTON G	114/361
*	C	US-3,068,046 A	12-1962	BOURGOIN LAUREO P	296/95.1
*	D	US-4,164,233 A	08-1979	McAndrew, James R.	135/88.08
*	E	US-5,368,056 A	11-1994	Riggi, Jr., Jack	135/88.07
*	F	US-5,700,048 A	12-1997	Wade et al.	296/163
*	G	US-5,843,548 A	12-1998	Sanders, Ronald H.	428/40.1
*	H	US-6,263,893 B1	07-2001	Spinella et al.	135/88.01
*	I	US-6,705,664 B1	03-2004	Lahutsky, Tammy Jane Smith	296/136.12
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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